Supreme Court, U.S.
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No. 94-2052

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1994

Lori Crisan and Lisa DiDonato,

Petitioners,

v.

A.G. Edwards and Sons, Inc. and Anthony Piazza,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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RESPONSE TO PETITIONERS' QUESTION PRESENTED

The Petitioners' question presented fails to precisely articulate the only issue properly before this Court. For reasons more fully stated in this Brief in Opposition to Petition for Writ of Certiorari, Petitioners' question presented misrepresents the issue decided by the Ninth Circuit Court of Appeals. In granting Respondents' Motions to Dismiss Petitioners' Appeals, the Ninth Circuit clearly held that it lacked jurisdiction to consider either appeal where the Respondents' Motions to Dismiss and Compel Arbitration were embedded in substantive issues pending before the District Court. Therefore, the only issue properly before this Court is:

QUESTION PRESENTED FOR REVIEW

Whether the Ninth Circuit Court of Appeals properly dismissed Petitioners' appeals for lack of jurisdiction where Respondents' Motions to Dismiss and Compel Arbitration were embedded in Petitioners' substantive suits pending before the district court.

TABLE OF CONTENTS

Response to Petitioners' Question Presented i

Question Presented i

Table of Contents ii

Table of Authorities iii

Introduction v

Opinions Below v

Jurisdiction vi

Statement of the Case 1

Reasons Why the Petition Should be Denied 5

I. The Court of Appeals Correctly Dismissed The Appeals For Lack Of Jurisdiction and Properly Concluded That The District Court's Orders Which Had The Effect Of Compelling Arbitration Were Interlocutory Orders That Were Not Immediately Appealable. 6

II. Petitioners Cite No Cases To Support Their Assertion That The Ninth Circuit's Orders Of Dismissal Are In Conflict With The Decisions Of Other Circuits. 10

Conclusion 14

TABLE OF AUTHORITIES

I. CASES

Adair Bus Sales, Inc. v. Blue Bird Corp.,
25 F.3d 953 (10th Cir. 1994) 10, 13

Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974) 5

Apollo Computer v. Berg, 886 F.2d 469
(1st Cir. 1989) 11

Filanto, S.P.A. v. Chilewich Int'l Corp.,
984 F.2d 58 (2d Cir. 1993) 11, 12

Gammaro v. Thorp Consumer Discount Co.,
15 F.3d 93 (8th Cir. 1994) 11, 12, 13

Gilmer v. Interstate/Johnson Lane Corp.,
500 U.S. 20 (1991) 5

Harris v. Forklift Systems, Inc., 510 U.S. _, 126 L.Ed.2d
295, 114 S. Ct. 367 (1993) 5

Humphrey v. Prudential Sec. Inc.,
4 F.3d 313 (4th Cir. 1993) 11, 13

McCowan v. Dean Witter Reynolds Inc.,
889 F.2d 451 (2nd Cir. 1989) 12

McDermott Int'l v. Underwriters at Lloyds, 981 F.2d 744
(5th Cir.), *cert. denied*, _ U.S. _, 113 S. Ct.
2442, 124 L.Ed.2d 660 (1993) 11

Perera v. Siegel Trading Co.,
951 F.2d 780 (7th Cir. 1992) 11, 14

Prudential Ins. Co. v. Lai,
42 F.3d 1299 (9th Cir. 1994) . . . . . v, 2, 6, 9, 10

Thomson McKinnon Securities, Inc. v. Salter,
873 F.2d 1397 (11th Cir. 1989) 11

II. STATUTES

9 U.S.C. § 16 . . . . . v, 7, 8, 9, 10

III. MISCELLANEOUS

Supreme Court Rule 10 vii

Supreme Court Rule 29 1

INTRODUCTION

Certiorari should not be granted in this case. The proper issue, which Petitioners fail to recognize, is whether the district court's orders dismissing Petitioners' cases and sending Petitioners to arbitration were embedded in Petitioners' substantive claims. If the proceedings were embedded, the Ninth Circuit Court of Appeals was correct in determining that orders compelling arbitration decided in the context of "embedded proceedings" were interlocutory orders, and were not final appealable decisions under the Federal Arbitration Act, 9 U.S.C. § 16.

In this case, the district court's orders which had the effect of compelling Petitioners' federal and state law claims to arbitration were not final decisions under 9 U.S.C. § 16 and, therefore, the Ninth Circuit had no subject-matter jurisdiction to hear the merits of the appeals. The distinction between embedded and independent proceedings for appealability purposes has been recognized by at least the First, Second, Fourth, Fifth, Seventh, Eighth, Tenth, and Eleventh Circuit Courts of Appeal and was explicitly recognized by the Ninth Circuit for the first time in its recent decision *Prudential Ins. Co. v. Lai,* 42 F.3d 1299 (9th Cir. 1994).

OPINIONS BELOW

No official reports of opinions delivered in this case are known to exist. The district court's decision in *Crisan v. A.G. Edwards and Sons Inc., Anthony Piazza and Does I - L*, however, appears as an unpublished opinion at No. 94-20025 SW, 1994 U.S. Dist. LEXIS 8648 (N.D. Cal. May 25, 1994).

JURISDICTION

Petitioners incorrectly cite 28 U.S.C. § 1291 and the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e(2)(a), as providing a basis for jurisdiction for this appeal. Neither of these statutes is relevant to the issue before this Court. Title 28 U.S.C. § 1291 states that courts of appeal have jurisdiction over final orders issued by district courts. The Ninth Circuit correctly concluded that because the district court's orders in these matters were interlocutory rather than final orders, it had no jurisdiction to hear Petitioners' appeals. Hence, Petitioners citation of this statutory authority is erroneous.

The Civil Rights Act of 1964 is relevant only with respect to Petitioners' underlying claims of discrimination. The Act provides no jurisdictional basis for appeal because no determination has been made on the merits of Petitioners' Title VII claims.

Furthermore, Petitioners' citation to the Fifth Amendment to the United States Constitution is inapposite. Petitioners have cited the Fifth Amendment as granting the "right to trial by jury." Petition for Writ of Certiorari at 3. This citation is incorrect as the Fifth Amendment makes no mention of such right, and because the Seventh Amendment, which does grant a right to trial by jury, only applies in common law cases. The instant case is rooted in statutory rights, not common law.

Petitioners' citation to 12 U.S.C. § 1291 as providing jurisdiction for this appeal is baffling. This section involves the National Agricultural Credit Corporations and was repealed in 1959.

In addition, Petitioners have not offered any special or important reason, either in their jurisdictional statement or

in their argument, why this case merits the Court's attention. Supreme Court Rule 10 provides as follows:

> .1. A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for writ of certiorari will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:
>
> > (a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
> >
> > (b) When a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.
> >
> > (c) When a state court or a United States court of appeals has decided an important question of federal law which has not been, but

> should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

Petitioners have erroneously implied that the decisions of the Ninth Circuit Court of Appeals conflict with other decisions of any United States court of appeals. In fact, all of the courts of appeal which have addressed the precise issue in this case have consistently held in the same manner as the Ninth Circuit. Nor do Petitioners contend that the Ninth Circuit Court of Appeals decision conflicts with applicable decisions of this Court. Petitioners do allege that the question of federal law presented in this case should be decided by the Court. However, Petitioners have failed to provide any substantive reasons, much less persuasive reasons, why the issue in this case may correctly be characterized as "an important question of federal law."

STATEMENT OF CASE

On or about January 11, 1994, Petitioners Crisan and DiDonato filed separate three count complaints for damages in the United States District Court, Northern District of California against A. G. Edwards & Sons, Inc.,[1] Anthony Piazza and Does I through L.[2] In the first count of each complaint, Petitioners alleged that they were subjected to hostile environment sexual harassment under Title VII of the Civil Rights Act of 1964. In their remaining counts, Petitioners asserted pendent state claims for intentional infliction of emotional distress and intentional interference with business relations pursuant to California law. On or about February 11, 1994, Respondents moved to dismiss Petitioners' complaints and to compel arbitration.

In response to the motions to dismiss and to compel arbitration, on April 8, 1994, Petitioners filed first amended complaints in which they added a claim for rescission of the arbitration provisions which formed the basis of Respondents' motions. On April 25, 1994, Respondents again moved to dismiss the first amended complaints and to compel arbitration on essentially the same grounds as expressed in their first motions.

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[1] As required by Supreme Court Rule 29, the following constitutes all parent companies and subsidiaries (except wholly owned subsidiaries) of Respondent A.G. Edwards & Sons, Inc.:

A.G. Edwards & Sons, Inc.

[2] Because Petitioners have consolidated their two cases for the purposes of their Petition for Writ of Certiorari, Respondents have discussed the claims of both Petitioners.

On May 25, 1994, the United States District Court for the Northern District of California ruled in favor of Respondents and dismissed Petitioners' first amended complaints without leave to amend, thus compelling their claims to arbitration. On or about June 13, 1994, Petitioners filed timely notices of appeal to the Ninth Circuit Court of Appeals.

On December 20, 1994, the Ninth Circuit Court of Appeals decided *Prudential*, where the court for the first time recognized that an order directing a case to arbitration is not appealable when that determination is "embedded" in substantive claims asserted by the plaintiff. *See* 42 F.3d at 1301.

On February, 10 1995, Respondents filed Motions to Dismiss Petitioners' appeals, based on the embedded proceeding theory. On March 24, 1995, the Ninth Circuit Court of Appeals granted Respondents' Motions to Dismiss stating:

> Appellees' motion to dismiss this appeal for lack of jurisdiction is granted. *See Prudential Ins. Co. of America v. Lai,* 42 F.3d 1299, 1301 (9th Cir. 1994) (this court lacks jurisdiction to review district courts' order compelling arbitration in embedded proceeding).
>
> All pending motions are denied as moot.

Petition for Writ of Certiorari at Appendices A and B.

On March 29, 1995, Petitioners filed a Petition for Rehearing and Suggestion for Rehearing En Banc by the Ninth Circuit Court of Appeals. On May 4, 1995, the Ninth Circuit rejected Petitioners' request.

The Statement of the Case found in the Petition for Writ of Certiorari is in error in at least the following respects:

1. Petitioners misstate Respondents' position with regard to the applicable arbitration provision involving Petitioner DiDonato. Although Respondents' Motion to Dismiss and Compel Arbitration filed with the district court with respect to Petitioner Crisan was based on the arbitration clause in her Uniform Application for Securities Industry Registration (U-4 Form), Respondents have repeatedly informed Petitioners, the district court, and the court of appeals, that DiDonato never executed a U-4 Form. Rather, the arbitration clause applicable to her claims is found in her employment application. *See* Petition for Writ of Certiorari at 11a-13a. Hence, Petitioners' statement in their Petition that "Respondents contended that (1) Petitioners signed a Uniform Application for Securities Industry Registration (U-4) Form . . .," (Petition for Writ of Certiorari at 4), is inaccurate and misleading.

2. Petitioners also state that the district court did not rule on Respondents' Motions to Compel Arbitration. Petition for Writ of Certiorari at 4. This representation is inaccurate. Respondents' Motions were entitled "Motion to Dismiss and Compel Arbitration." The motions were granted. Furthermore, as clearly demonstrated in the district court's orders, *see* Petition for Writ of Certiorari at Appendices C and D, the court's entire discussion revolves around the enforceability of the arbitration clauses and the need to compel arbitration. For example, in its discussion of the arbitrability issues, the district court concludes, "if Crisan's U-4 Form is valid and enforceable, her case ***must be dismissed and sent to arbitration***." Petition for Writ of Certiorari at 6a (emphasis added). After rejecting Crisan's "rather

confusing attempt to avoid arbitration," the court dismissed Crisan's case as improperly before the court because the claims were subject to valid mandatory arbitration provisions.[3]

3. Accordingly, Petitioners' contention that "It [the district court] did ***not*** compel arbitration and, indeed, it did not even address the issue," (Petition for Writ of Certiorari at 6), is a blatant misstatement of the record. This Court need only review the district court's orders to determine the extent of Petitioners' misstatement.

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[3] The district court underwent the same thorough discussion of the reasons for enforcing the arbitration clause applicable to DiDonato's case. The thrust of the arbitrability analysis differed only in the court's recognition that "[a]n individual may be compelled to arbitrate a dispute arising under Title VII on an arbitration provision contained in his or her employment application." *See* Petition for Writ of Certiorari at 12a.

REASONS WHY THE PETITION SHOULD BE DENIED

In this case, the only issue presented is an exceedingly narrow and precise jurisdictional issue. Despite Petitioners' efforts to interject issues relating to the merits of their underlying, substantive claims,[4] the sole issue

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[4] In their Petition, Petitioners express their desire to have this Court "harmonize" its rulings in *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974), and *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991), in light of the Court's recent holding in *Harris v. Forklift Systems, Inc.*, 510 U.S. _, 126 L.Ed.2d 295, 114 S. Ct. 367 (1993). Clearly, these cases are completely irrelevant to the narrow issue presented in this case and Petitioners' reference to these cases represents an inappropriate attempt to introduce matters not properly before this Court. In addition, Petitioners continue to mistakenly rely on the *Harris v. Forklift Systems* case. As Respondents have previously indicated in numerous briefs submitted to the district court and the Ninth Circuit, the *Harris* decision has no bearing on the arbitrability of Petitioners' claims and their continuing citation of that case as being somehow in support of their position remains wholly without legal merit. Similarly, Petitioners' reference and citation to articles in the *Wall Street Journal* and pending legislation regarding the propriety and fairness of arbitration in certain situations is nothing more than a not so subtle attempt to mislead this Court with respect to the only issue presented in this case. Although Petitioners suggest that this Court review the district court's decision with respect to the arbitrability of their claims, that matter is not properly before this Court. Rather, the sole issue properly presented in this case is whether the Ninth Circuit properly concluded that it lacked jurisdiction to hear

presented for review is whether the Ninth Circuit Court of Appeals properly dismissed Petitioners' appeals for lack of jurisdiction. In dismissing Petitioners' appeals, the Ninth Circuit correctly applied the holding of its recent ruling in *Prudential Ins. Co. v. Lai*, 42 F.3d 1299 (9th Cir. 1994), *pet. for cert. filed* (May 22, 1995), and concluded that it lacked jurisdiction to review the district court's orders compelling arbitration in embedded proceedings. The Ninth Circuit's decision in the case at bar and in *Prudential* were based on uniform and well-established law.

Accordingly, the Petition should be denied because (i) the Petition fails to establish that the district court's orders were final rather than interlocutory; (ii) the Petition cites no cases in conflict with the Ninth Circuit's decisions to dismiss the appeals for lack of jurisdiction; and (iii) the Ninth Circuit's decisions dismissing the appeals for lack of jurisdiction are correct, and are supported by numerous cases not cited in the Petition.

I. The Court of Appeals Correctly Dismissed The Appeals For Lack Of Jurisdiction and Properly Concluded That The District Court's Orders Which Had The Effect Of Compelling Arbitration Were Interlocutory Orders That Were Not Immediately Appealable.

Contrary to Petitioners' assertions, the district court's May 25, 1994 orders which had the effect of compelling Petitioners' federal and state law claims to arbitration were not final decisions under 9 U.S.C. § 16 and, therefore, the

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Petitioners' appeals.

Ninth Circuit properly dismissed each of Petitioners' appeals for lack of jurisdiction.

In 1988, as part of the Judicial Improvements and Access to Justice Act, Pub L. No. 100-702 § 1019(a), Congress amended the standards under the Federal Arbitration Act ("FAA") by which appeals may be taken in arbitration-related cases. Under § 1019 of the Act, now codified at 9 U.S.C. § 16[5], Section 16 provides, in pertinent part, as follows:

> § 16. Appeals
>
> (a) An appeal may be taken from --
>
> (1) an order --
>
> (A) refusing a stay of any action under section 3 of this title;
>
> (B) denying a petition under section 4 of this title to order arbitration to proceed;
>
> (C) denying an application under section 206 of this title to compel arbitration;
>
> . . . .
>
> (3) a final decision with respect to an arbitration that is subject to this title.
>
> (b) Exception as otherwise provided in section 1292(b) of title 28, **an appeal may not be taken from an interlocutory order** --

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[5] Section 16 of the FAA was originally added as § 15, but was later amended and renumbered as § 16 when it was discovered the FAA had two sections numbered 15.

(1) granting a stay of any action under section 3 of this title;
(2) **directing arbitration to proceed under section 4 of this title;**
(3) **compelling arbitration under section 206 of this title**; or
(4) refusing to enjoin an arbitration that is subject to this title.

9 U.S.C. § 16 (emphasis added).

In petitioning this Court for certiorari and contending that the district court's orders were final decisions, Petitioners rely exclusively on the facts that the district court's orders were nominally entitled orders of dismissal and that those orders did not expressly order Petitioners' claims to arbitration. Indeed, in an ineffectual effort to divert this Court's attention from the sole issue presented in this appeal, Petitioners audaciously state that the district court's opinions did not even address the issue of the arbitrability of Petitioners' claims. Petition for Writ of Certiorari at 6. Notwithstanding Petitioners' blatant misrepresentation of the district court's opinions, even a cursory review of those opinions demonstrates that the entire thrust of the district court's orders of dismissal was that the arbitration agreements executed by Petitioners were enforceable and that Petitioners' claims should be compelled to arbitration. See Appendices C and D to Petition for Writ of Certiorari. For example, in dismissing Petitioner Crisan's complaint, the district court stated that "if Crisan's U-4 Form is valid and enforceable, her case must be dismissed ***and sent to arbitration***." Appendix C to Petition for Writ of Certiorari at 6a (emphasis added). *See also* Appendix D to Petition for Writ of Certiorari at 12a ("if the arbitration clause in DiDonato's employment application is valid, her case must be dismissed *and sent to arbitration*") (emphasis added).

Because the district court ultimately concluded that both arbitration agreements were valid and enforceable, the district court's orders of dismissal, *ipso facto*, had the effect of compelling Petitioners' substantive claims to arbitration. Moreover, because the orders were entered in actions which also included substantive claims,[6] those orders were nonappealable interlocutory orders as enumerated in 9 U.S.C. § 16 (b)(3).

Furthermore, despite Petitioners' unsupported protests to the contrary, the Ninth Circuit's orders dismissing the appeals for lack of jurisdiction were fully and directly supported by the Ninth Circuit's recent decision in *Prudential Ins. Co. v. Lai*, 42 F.3d 1299 (9th Cir. 1994). In *Prudential*, the Ninth Circuit explicitly recognized for the first time that an order compelling arbitration decided in the context of an "embedded proceeding" is an interlocutory order, and is not a final decision, under 9 U.S.C. § 16. Thus, the court accordingly concluded that "pro-arbitration decisions are not appealable final judgments." *Id.* at 1301. In reaching this conclusion, the court acknowledged the rule followed by a clear majority of circuits that there is a distinction for appealability purposes between "independent" proceedings, in which the "motion to compel arbitration in a given case is the only claim before the district court," and "embedded proceedings," in which the "motion to compel arbitration is 'embedded' in a substantive suit pending before the

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[6] In their Statement of the Case, Petitioners acknowledge that they asserted claims under Title VII of the Civil Rights Act of 1964 and pendent state claims in the district court. Petition for Writ of Certiorari at 3. In essence, Petitioners have conceded that the issue of the arbitrability of these claims arose in an embedded proceeding.

court." *Id.* at 1302. In independent proceedings, a decision to compel arbitration disposes of the entire case and is thus immediately appealable under 9 U.S.C. § 16(a)(3). However, in an embedded proceeding, "the district court's decision to compel arbitration of some or all of the claims before it is not considered to be final, and therefore not reviewable." *Id.*

In *Prudential*, the Ninth Circuit determined that it had jurisdiction to hear the merits of that appeal because the motion to compel arbitration was brought as an independent proceeding. *Id.* Plaintiff's complaint for monetary relief was filed in state court and the federal complaint raised only the issue of arbitration. *Id.* at 1301. In contrast, in the instant case, the issue of the arbitrability of Petitioners' claims arose in the context of their federal suits for damages in which they have alleged violations of various federal and state laws. Thus, contrary to Petitioners' assertions, the Ninth Circuit's orders dismissing Petitioners' appeals are not in direct conflict with *Prudential*, but are entirely consistent with and directly supported by that opinion.

II. Petitioners Cite No Cases To Support Their Assertion That The Ninth Circuit's Orders Of Dismissal Are In Conflict With The Decisions Of Other Circuits.

The Ninth Circuit's orders dismissing Petitioners' claims for lack of jurisdiction and the *Prudential* case are completely consistent with the law of a majority of circuits which have adopted the view that an order compelling arbitration in an embedded proceeding is not a final decision under § 16(a)(3) and is, thus, not subject to immediate appellate review, even when all claims in which the arbitration issue is embedded are resolved. *See, e.g., Adair Bus Sales, Inc. v. Blue Bird Corp.*, 25 F.3d 953

(10th Cir. 1994) (declining to hear merits of appeal where issue of arbitrability arose in context of embedded proceeding); *Gammaro v. Thorp Consumer Discount Co.*, 15 F.3d 93 (8th Cir. 1994) (concluding that FAA prohibits immediate appeal from interlocutory order "directing arbitration to proceed" and, thus, dismissing appeal for lack of jurisdiction); *Humphrey v. Prudential Sec. Inc.*, 4 F.3d 313 (4th Cir. 1993) (holding that order compelling arbitration in embedded proceeding was not final decision and dismissing appeal for lack of subject-matter jurisdiction); *Filanto, S.P.A. v. Chilewich Int'l Corp.*, 984 F.2d 58 (2d Cir. 1993) (holding that district court order directing arbitration was not appealable); *McDermott Intern. v. Underwriters at Lloyds*, 981 F.2d 744 (5th Cir.), *cert. denied*, _ U.S. _, 113 S. Ct. 2442, 124 L.Ed.2d 660 (1993) (dismissing appeal for lack of jurisdiction after concluding that district court order compelling arbitration was interlocutory and not appealable); *Perera v. Siegel Trading Co.*, 951 F.2d 780 (7th Cir. 1992) (holding that district court order directing plaintiff to resolve claims in arbitration was not a final decision and dismissing appeal for lack of jurisdiction). *See also Apollo Computer v. Berg*, 886 F.2d 469 (1st Cir. 1989) (recognizing distinction between embedded and independent proceedings for purposes of appealability); *Thomson McKinnon Securities, Inc. v. Salter*, 873 F.2d 1397 (11th Cir. 1989) (same).

Under the well-established authority of these circuits, an order compelling arbitration is considered final "only when it results from a proceeding in which the sole issue before the district court is the arbitrability of the dispute," *i.e.*, an independent proceeding. *Humphrey*, 4 F.3d at 317. *See also Perera*, 951 F.2d at 785 ("arbitration orders [are] final if arbitrability is the sole issue before the court and interlocutory if raised in an embedded

proceeding"). Because the Petition does not present a conflict within the circuits, it does not merit review.

The adoption of this bright-line rule is consistent with and not only promotes the often-cited federal policy favoring arbitration, but promotes the Congressional policy as evidenced in the 1988 amendments to limit appeals from orders directing arbitration. *See Filanto*, 984 F.2d at 60; *Gammaro*, 15 F.3d at 96-97 ("adoption of a bright-line rule will best advance Congress's intent" which is to "postpone review of orders compelling arbitration in embedded proceedings").

Under the definition of "final decision" adopted by these circuits, a district court's dismissal of the underlying complaint for relief and ordering arbitration is also considered to be an interlocutory order not subject to appellate review. *See McCowan v. Dean Witter Reynolds Inc.*, 889 F.2d 451 (2nd Cir. 1989). In *McCowan*, the Second Circuit Court of Appeals dismissed the appeal for lack of jurisdiction, finding that the district court's order dismissing and referring claims to arbitration was not a final appealable order. *Id.* at 452-53. In that case, investors filed suit against a brokerage firm, alleging violations of RICO and federal securities laws. The defendant moved to dismiss the complaint and requested that the court compel the claims to arbitration. *Id.* at 451-52. In its order, the district court dismissed some of the claims and merely "referred" others to arbitration. After the plaintiffs appealed, the defendant moved to dismiss the appeal on the grounds that the district court order was interlocutory. In rejecting plaintiff's argument that the dismissal order was a final decision, the court reasoned that, although the district court had only "referred" the claims to arbitration "and did not explicitly stay their [plaintiffs'] action based on these claims, we are nevertheless persuaded that the effect of the district court's

1987 Order was to stay litigation of these claims." *Id.* at 453. Finding that the district court's order of dismissal could be interpreted as a stay, the appellate court dismissed the appeal for lack of jurisdiction. *Id.*

Similarly, in *Adair Bus Sales, Inc.*, the plaintiff filed a complaint against defendant for breach of contract and requested a declaratory judgment that the arbitration clause in the agreement between the parties did not apply to the particular dispute. 25 F.3d at 953-54. The defendant moved to compel arbitration and for a stay of the underlying action pending arbitration. Although the defendant requested a stay, the district court dismissed the complaint and ordered the parties to proceed to arbitration. Plaintiff immediately appealed that decision to the Tenth Circuit. *Id.* at 954-55. In declining to hear the merits of plaintiff's appeal, the Tenth Circuit concluded that its appellate jurisdiction was limited to vacating the order of dismissal and remanding for entry of a stay pending arbitration. *Id.* at 955-56.

The court reasoned that "an order does not constitute a final decision, and is not immediately reviewable on appeal, if issues other than the propriety of arbitration are raised or relief other than a determination as to the arbitrability of the dispute is sought." *Id.* at 955. Accordingly, the court held that "[w]e decline to reach the merits of Plaintiff's appeal in light of our adoption of the majority view discouraging immediate appellate review in a proceeding in which relief other than a determination of arbitrability is sought." *Id.* *See also Gammaro*, 15 F.3d at 95 (dismissing appeal of order compelling arbitration in embedded proceeding and reasoning that "federal courts should brook no delay in requiring compliance with orders compelling arbitration"); *Humphrey*, 4 F.3d at 314 (dismissing appeal and concluding that it had no subject-matter jurisdiction to hear merits of appeal in embedded

proceeding); *Perera*, 951 F.2d at 781 (holding that appellate court had no subject-matter jurisdiction because the district court's order to arbitrate in the embedded preceding was not a final decision in that it did not resolve the merits of the underlying claims sent to arbitration).

In the instant case, it is clear that the district court's orders compelling Petitioners' claims to arbitration were interlocutory orders that were not immediately appealable. In their federal complaints, Petitioners sought relief under Title VII and various state common law theories. The orders compelling arbitration and dismissing the complaints were thus issued in the context of embedded proceedings. Accordingly, the Ninth Circuit properly concluded that it had no subject-matter jurisdiction to hear the merits of Petitioners' appeals. For the same reasons, this Court has no jurisdiction to hear the merits of the instant appeal.

CONCLUSION

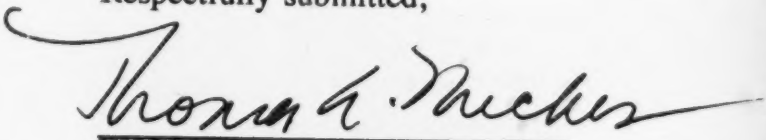
During the course of their employment with Respondent A.G. Edwards & Sons, Inc., Petitioners executed arbitration agreements. In response to Respondents' Motions to Dismiss and To Compel Arbitration, the district court concluded that both arbitration agreements were valid and enforceable and that Petitioners should pursue their claims in arbitration. The clear effect of the district court's orders granting Respondents' Motions was to compel Petitioners' claims to arbitration. The Ninth Circuit Court of Appeals properly concluded that it had no jurisdiction to hear Petitioners' appeals because the district court's orders compelled arbitration in embedded proceedings.

Petitioners have failed to present any convincing arguments with respect to how these cases satisfy this

Court's requirements for granting certiorari. This case does not present a situation in which a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals. Rather, the Ninth Circuit's decisions to dismiss Petitioners' appeals were in harmony with the law of all circuits that have addressed this issue. Furthermore, this case is not one in which a United States court of appeals has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the Supreme Court's power of supervision. Rather, the Ninth Circuit's orders were fully consistent with the federal policy favoring arbitration as expressed in the 1988 amendments to the Federal Arbitration Act.

Because the Court of Appeals for the Ninth Circuit properly dismissed Petitioners' appeals for lack of jurisdiction, Petitioners' Petition for Writ of Certiorari should be denied.

Respectfully submitted,



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